

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 281

6
7 H.P. 240

House of Representatives, January 30, 1985

8 Reference to the Committee on Labor suggested and ordered printed.

9 EDWIN H. PERT, Clerk

10 Presented by Representative Cooper of Windham.

Cosponsored by Senator Dutremble of York, Representative Pouliot of
Lewiston and Senator Twitchell of Oxford.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Limit Payment of Attorneys' Fees
18 Under the Workers' Compensation Law.
19

20 Be it enacted by the People of the State of Maine as
21 follows:

22 Sec. 1. 39 MRSA §103-B, sub-§4, as enacted by PL
23 1981, c. 514, §6, is amended to read:

24 4. Costs. Costs of appeal shall be allowed, in-
25 cluding the record, and including reasonable attor-
26 neys' fees as provided for under section 110. No at-
27 torney who represents an employee who prevails before
28 the division may recover any fee from that client for
29 that representation. Any attorney who violates this
30 paragraph subsection shall lose his fee and is liable
31 in a court suit to pay damages to the client equal to
32 2 times the fee charged that client.

33 Sec. 2. 39 MRSA §103-C, sub-§4, as enacted by PL
34 1981, c. 514, §6, is amended to read:

1 4. Costs. In all cases of appeal to the Law
2 Court, it may order a reasonable allowance to be paid
3 to the employee by the employer for expenses incurred
4 in the proceedings of the appeal, including the
5 record, but not including expenses incurred in other
6 proceedings in the case. Reasonable attorneys' fees
7 shall be allowed as provided for under section 110.
8 No attorney who represents an employee who prevails
9 before the court may recover any fee from that client
10 for that representation. Any attorney who violates
11 this ~~paragraph~~ subsection shall lose his fee and is
12 liable in a court suit to pay damages to the client
13 equal to 2 times the fee charged that client.

14 Sec. 3. 39 MRSA §110, as amended by PL 1983, c.
15 479, §30, is repealed and the following enacted in
16 its place:

17 §110. Witness and attorney's fees allowable

18 If an employee prevails in any proceeding, insti-
19 tuted by either the employee or the employer, which
20 involves a dispute as to the compensability of an in-
21 jury, the employee's entitlement to compensation or
22 the amount of compensation payable under this Act,
23 the commission or commissioner may assess the employ-
24 er costs of a reasonable attorney's fee and witness
25 fees whenever the witness was necessary for the prop-
26 er and expeditious disposition of the case.

27 The employer may not be assessed costs of an at-
28 torney's fee attributable to services rendered prior
29 to one week after the informal conference under sec-
30 tion 94-B or, if the informal conference is waived,
31 services rendered prior to the date of that waiver,
32 unless a party adverse to the employee was so repre-
33 sentated at that stage.

34 No attorney representing an employee who prevails
35 in a proceeding under this Act may receive any fee
36 from that client for an appearance before the commis-
37 sion, including preparation for that appearance, ex-
38 cept as provided in section 94-B, subsection 3. Any
39 attorney who violates this paragraph shall lose his
40 fee and shall be liable in a court suit to pay dam-
41 ages to the client equal to 2 times the fee charged
42 for that client.

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STATEMENT OF FACT

2 Unlike the workers' compensation laws in every
3 other state in the country, Maine law now requires an
4 employer to pay a claimant's legal expenses regard-
5 less of whether the claimant wins or loses the case.

6 In some states, an employer is never required to
7 pay the claimant's legal expenses. In others, the
8 employer is required to pay but only in cases in
9 which the employee is successful. In no other state
10 is the employer required to pay, win or lose.

11 This bill adopts the middle of the road approach
12 by requiring employers to pay legal fees in cases in
13 which the employee prevails.

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